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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1958

No. [redacted] 120

LOUISIANA STATE BOARD
OF EDUCATION, ET AL.,
Petitioners,

versus

ALMA LARK, ET AL.,
Respondents.

LOUISIANA STATE BOARD
OF EDUCATION, ET AL.,
Petitioners,

versus

JACK BAILEY, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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Petitioners, Louisiana State Board of Education, Leon Gary; Nash C. Roberts, Jr.; Isom J. Guillory; Raymond Heard; Joseph J. Davies; Mrs. Eleanore H. Meade; Robert H. Curry; George Madison; Merle M. Welsh; Alfred E. Roberts; Harold B. McSween; members of the Louisiana State Board of Education; Shelby M. Jackson, State Superintendent of Education; Wayne N. Cusic, President and Inez S. Moses, Registrar of McNeese State College;

Luther H. Dyson, President; C. J. Hyde, Registrar of Southeastern Louisiana College; Joel L. Fletcher, President, and Lea L. Seale, Registrar of Southwestern Louisiana Institute pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on February 13, 1958.

CITATIONS TO OPINIONS BELOW.

The opinion and decrees of the United States District Court for the Eastern District of Louisiana, Honorable Herbert W. Christenberry and J. Skelly Wright presiding, rendered and entered on April 15, 1957, are reported in 150 Fed. Supp. 900 and are printed in Appendix "B" hereto, page 19, *et seq.* The opinion and decrees of the United States Court of Appeals for the Fifth Circuit rendered and entered on February 13, 1958, are reported in 252 Fed. 2d 372 and are printed in Appendix "B" hereto, page 31, *et seq.* The order of the United States Court of Appeals for the Fifth Circuit denying a rehearing is printed in Appendix "B", page 44.

JURISDICTION.

The judgment of the Court of Appeals was entered on February 13, 1958 (Lark, Tr. p. 119; Bailey, Tr. p. 110). Rehearing was denied on March 28, 1958 (Lark, Tr. p. 134; Bailey, Tr. p. 125). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTIONS PRESENTED.

1. May a suit be filed against the State Agency even though the sovereign state has specifically withdrawn consent to sue said agency?

2. In order to fall under the exception to the 11th Amendment set forth in *Ex parte Young*, 209 U. S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908), must the plaintiff sue as parties defendant persons charged with enforcement of the statute claimed to be unconstitutional?

3. May a single judge of the Federal Court issue a preliminary injunction restraining the enforcement of a state statute on grounds of unconstitutionality even though prohibited from doing so by a federal statute?

4. Is the law of Louisiana requiring a Certificate of Eligibility in order to be admitted to a publicly financed institution of higher learning contrary to the 14th Amendment?

5. May a Court use statements of certain legislators made after passage of a bill to determine the legislative intent in passing of a specific act?

6. May a Federal District Judge waive the mandatory provision that a plaintiff must furnish bond in order that the Court may issue a preliminary injunction?

STATUTES INVOLVED.

Constitution of the State of Louisiana, Article XIX, Section 26, withdrawing consent to suit against the Board of Supervisors of Louisiana State University. Act 15 of 1956 (R. S. 17:2131-2135) requiring a Certificate of Eligibility in order to enroll at a state financed institution of higher learning. Act 249 of 1956 (R. S. 17:443)

Teacher Tenure Act; all of which are printed herein in Appendix "A" at page 14, *et seq.*

STATEMENT OF FACTS.

Plaintiffs in both suits filed a complaint in the United States District Court for the Eastern District of Louisiana, on January 17, 1957, against the Louisiana State Board of Education, individual members of the Board, Shelby M. Jackson, State Superintendent of Education; Wayne N. Cusic, President and Inez S. Moses, Registrar of McNeese State College; Luther H. Dyson, President and C. J. Hyde, Registrar of Southeastern Louisiana College; Joel L. Fletcher, President and Lea L. Seale, Registrar of Southwestern Louisiana Institute, seeking a temporary restraining order and preliminary and final injunctions to restrain the enforcement by certain officers of the State of Louisiana, of certain Louisiana Statutes, to-wit: Louisiana Revised Statutes 17:443 (Act 249 of 1956) and Revised Statutes 17:2131-2135, inclusive (Act 15 of 1956).

In their complaints they alleged that the aforesaid statutes were contrary to the 14th Amendment of the United States Constitution in that said statutes deprived them and others similarly situated of rights, privileges and immunities secured by the Constitution and laws of the United States, to-wit: Rights secured by the equal protection and due process clauses of the 14th Amendment to the United States Constitution and Title 42, U.S.C., Section 1981; wherefore they prayed that a temporary restraining order issue enjoining Defendants from denying them the right to register at the respective colleges. They further prayed that a three-judge court be convened

as required by Title 28, U.S.C., Secs. 2281-2284, and that a hearing be held to determine whether a preliminary and permanent injunction should issue enjoining defendants and their agents from refusing plaintiffs' registration for the forthcoming semester at the colleges, and that Louisiana Revised Statutes 17:2131-2135 (Act 15 of 1956) and Louisiana Revised Statutes 17:443 (Act 249 of 1956) be found in violation of due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution. (Lark, Tr. pp. 2-12; Bailey, Tr. pp. 2-10).

On January 17, 1957, District Judge Herbert W. Christenberry issued a temporary restraining order enjoining defendants from refusing to register plaintiffs and others similarly situated at Southwestern Louisiana Institute; Southeastern Louisiana College and McNeese State College until the hearing on said application for interlocutory injunction, and this temporary restraining order was extended from time to time until judgment on the interlocutory injunction. (Lark, Tr. pp. 26, 28, 64, 65, 66, 67, 68, 69, 70; Bailey, Tr. pp. 24, 55, 56, 57, 58, 59, 60, 61).

A hearing on the interlocutory injunction was had on February 8, 1957, at which time appellants filed a motion to dismiss based on lack of jurisdiction of the court and the plaintiffs' failure to state a claim upon which relief could be granted. (Lark, Tr. p. 29; Bailey, Tr. p. 27).

Appellants then filed their answer in the matter denying that the state statutes in question were contrary to or in violation of plaintiffs' constitutional rights. (Lark, Tr. pp. 51-56; Bailey, Tr. pp. 44-49).